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CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1363

Introduced by Assembly Member Jones

(Principal coauthors: Assembly Members Berg, Canciamilla, Frommer, ~~Liu~~, and ~~Montanez~~ Karnette, *Liu, Montanez, and Nunez*)

(Coauthors: Assembly Members ~~Cohn, Garcia, Klehs, Laird, Levine, Pavley, Chu, Cohn, Garcia, Klehs, Laird, Leno, Levine, Pavley, Saldana~~, and Spitzer)

February 22, 2005

An act to add Chapter 6 (commencing with Section 6500) to Division 3 of the Business and Professions Code, to amend Sections 1822, 1826, 1829, 1850, 1851, 2250, 2253, 2321, 2340, 2342, 2343, 2620, 2620.2, 2623, 2640, 2641, 2850, 2851, 2852, 2853, 2854, 2855, and 2920 of, to add Sections 1456, 1457, 1458, 2250.1, 2250.2 and 2410 to, and to repeal Sections 2342.5, 2344, and 2640.1 of, the Probate Code, and to add Division 8.7 (commencing with Section 9800) to the Welfare and Institutions Code, relating to conservatorship and guardianship.

LEGISLATIVE COUNSEL'S DIGEST

AB 1363, as amended, Jones. Omnibus Conservatorship and Guardianship Reform Act of 2006.

Existing law governs the establishment of conservatorships and guardianships. Existing law requires conservators and guardians to present a biennial accounting of the assets of the conservatee or ward and requires a biennial review of each conservatorship. Existing law requires the Department of Justice to maintain a statewide registry of conservators, guardians, and trustees. A court may not appoint a person as a conservator, guardian, or trustee unless that person is registered if he or she is required to do so.

This bill would enact the Omnibus Conservatorship and Guardianship Reform Act of 2006. The act would require professional conservators and guardians to be licensed and would prohibit a court from appointing nonlicensed professional conservators and guardians. The bill would require the Department of Consumer Affairs to establish and administer a licensing program for professional conservators and guardians, as defined. The bill would establish educational and training criteria for applicants for licensure. The bill would require the department to establish a licensing board to administer the program and to draft a fiduciaries' code of ethics. The bill would require the board to establish a complaint committee that would take disciplinary action, as appropriate, and make referrals to the Attorney General for violations of the statute or a breach of fiduciary duty. The bill would also remove conservators and guardians from the provisions governing registry, and require that the registry for trustees be maintained by the Department of Consumer Affairs, rather than the Department of Justice.

The bill would require the Judicial Council to adopt specified rules of court relating to conservatorships and guardianships and to enact educational programs for nonlicensed conservators and guardians. The bill would also require the Judicial Council to establish qualifications and educational classes for probate court attorneys and investigators, to require educational classes for probate judges and public guardians, to establish conservatorship accountability measures, and to develop a form to provide notice regarding free assistance provided by the court to conservators.

The bill would also make various changes to provisions governing conservatorship, including requiring an annual, rather than a biennial, review of conservatorships at a noticed hearing, requiring conservators and guardians to present an annual, rather than a biennial, accounting, prohibiting a court from reducing the amount of a bond in conservatorship proceedings without good cause, and imposing new

duties on court investigators with respect to cases involving proposed conservatees, among other changes.

The bill would establish in the California Department of Aging the Office of Conservatorship Ombudsman to collect and analyze data relative to complaints about conservatorships and to investigate and resolve complaints and concerns communicated by or on behalf of conservatees.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as the
2 Omnibus Conservatorship and Guardianship Reform Act of 2006.

3 SEC. 2. The Legislature finds and declares the following:

4 (a) California has the fastest growing population in the country,
5 and the rate of increase in the number of people who are 65 years
6 of age or older is surpassing that in other states. The number of
7 people who are 65 years of age will grow from 3.7 million people
8 in the year 2000, to 6.3 million in the year 2020. The fastest
9 growing segment of California's population, expected to increase
10 by 148 percent between the years 1990 and 2020, is people who
11 are 85 years of age or older. As many as 10 percent of the
12 population over 65 years of age and 25 percent of the population
13 over 85 years of age will suffer from Alzheimer's disease.

14 (b) As the population of California continues to grow and age,
15 an increasing number of persons in the state are unable to provide
16 properly for their personal needs, to manage their financial
17 resources, or to resist fraud or undue influence.

18 (c) One result of these trends is the growing number of persons
19 acting as conservators on behalf of other persons or their estates.
20 It is estimated that about 500 professional conservators oversee
21 \$1.5 billion in assets. Over 5,000 conservatorship petitions are
22 filed each year in California.

23 (d) Probate courts oversee the work of conservators, but, in part
24 due to a lack of resources and conflicting priorities, courts often
25 do not provide sufficient oversight in conservatorship cases to
26 ensure that the best interests of conservatees are protected.

27 (e) Professional fiduciaries are not adequately regulated at
28 present. This lack of regulation can result in the neglect, or the

1 physical or financial abuse, of the clients professional fiduciaries
2 are supposed to serve. For that reason, it is necessary to create a
3 program to license certain professional fiduciaries in order to
4 protect the public health, safety, and welfare.

5 (f) Public guardians do not have adequate resources to represent
6 the best interests of qualifying Californians and, therefore, many
7 in need of the assistance of a conservator go without.

8 (g) As a result, the conservatorship system in California is
9 fundamentally flawed and in need of reform.

10 SEC. 3. Chapter 6 (commencing with Section 6500) is added
11 to Division 3 of the Business and Professions Code, to read:

12
13 CHAPTER 6. PROFESSIONAL CONSERVATORS AND GUARDIANS
14 ACT
15

16 6500. This chapter shall be known and may be cited as the
17 Professional Conservators and Guardians Act.

18 6501. As used in this chapter, the following terms have the
19 following meanings:

20 (a) "Board" means the licensing board established by the
21 Department of Consumer Affairs pursuant to Section 6504.

22 (b) "Client" means the individual served by a professional
23 conservator or guardian.

24 (c) "Department" means the Department of Consumer Affairs.

25 (d) "Professional conservator or guardian" means a person who,
26 for compensation, acts as a conservator or guardian for two or
27 more persons not related to the professional conservator or guardian
28 or each other by blood, adoption, or marriage, registered domestic
29 partnership, or a relationship that satisfies the requirements of
30 subdivision (a) and paragraphs (1) to (4), inclusive, and paragraph
31 (6) of subdivision (b) of Section 297 of the Family Code.
32 Professional conservator or guardian also means a person,
33 employed by a public agency or financial institution, acting as a
34 conservator or guardian, who makes substantive fiduciary decisions
35 or supervises persons who make substantive fiduciary decisions.
36 A "professional conservator or guardian" does not include the
37 following:

38 (1) Any conservator or guardian who is not required to file
39 information with the clerk of the court pursuant to Section 2340
40 of the Probate Code, any person or entity subject to the oversight

1 of a local government, including an employee of a city, county,
2 or city and county, or any person or entity subject to the oversight
3 of the state or federal government, including an attorney licensed
4 to practice law in the State of California who acts as trustee of
5 only attorney client trust accounts, as defined in Section 6211.

6 (2) Any conservator who resided in the same home with the
7 conservatee immediately prior to the condition or event that gave
8 rise to the necessity of a conservatorship. This subdivision does
9 not create any order or preference of appointment, but simply
10 exempts a conservator described by this subdivision from licensure.

11 (3) A nonrelated guardian of the person of a minor appointed
12 by the court as the result of the selection of a permanency plan for
13 a dependent child or ward pursuant to Section 366.26 of the
14 Welfare and Institutions Code. It also does not include a nonrelated
15 guardian of the person of a minor appointed pursuant to Section
16 1514 of the Probate Code if that child is in receipt of AFDC-FC
17 payments and case management services from the county welfare
18 department, as evidenced by a Notice of Action of AFDC-FC
19 eligibility.

20 6502. A person applying for licensure as a professional
21 conservator or guardian shall meet all of the following
22 requirements:

- 23 (a) Be at least 21 years of age.
- 24 (b) Be a United States citizen.
- 25 (c) Have no felony convictions.
- 26 (d) Have submitted fingerprints for state and Federal Bureau of
27 Investigation criminal history background checks.
- 28 (e) Have completed the mandatory 15 hours of prelicensing
29 training.
- 30 (f) Have passed the licensing examination.
- 31 (g) Meet the qualifications for private professional conservators
32 or private professional guardians as required pursuant to Sections
33 2342.5, 2344, and 2850 provided that those professional
34 conservators and guardians with pending cases as of January 1,
35 2006, shall satisfy the required qualifications.
- 36 (h) Have agreed to adhere to the Professional Fiduciaries' Code
37 of Ethics.
- 38 (i) Have submitted an application for licensure.

1 (j) Have paid a nonrefundable application fee in an amount
2 determined by the boards that includes all costs associated with
3 the board, including investigatory costs.

4 6503. No person shall act as a professional conservator or
5 guardian unless that person is licensed as a professional conservator
6 or guardian in accordance with the provisions of this chapter. A
7 court shall not appoint a professional conservator or guardian to
8 serve unless that professional conservator or guardian is licensed.
9 A court shall not appoint a public agency or financial institution
10 to act as a conservator or guardian, unless the public agency or
11 financial institution certifies that it has at least one professional
12 conservator or guardian on its staff, and that all persons who meet
13 the definition of a professional conservator or guardian in
14 subdivision (d) of Section 6501 are licensed.

15 6504. The department shall establish a licensing board whose
16 membership shall be comprised of nine members selected by the
17 department. The members shall include four professional
18 fiduciaries, including one from the public sector who shall be a
19 member of the California State Association of Public
20 Administrators, Public Guardians, and Public Conservators, and
21 two from the private sector at least one of whom shall be a member
22 of the Professional Fiduciary Association of California. The
23 remaining members shall include a department employee, an
24 employee of the Judicial Council of California, a court investigator,
25 a member of the State Bar of California who is certified as a
26 specialist in probate, estate planning, and trust law, and the
27 Conservator Ombudsman.

28 6505. (a) Except as otherwise specified in Section 6508, the
29 board shall be responsible for administering the licensing program
30 established in this chapter.

31 (b) The board shall meet at least quarterly to vote to approve or
32 deny licensure to those applicants recommended to the board by
33 the department. If the board approves the application for licensure,
34 it shall notify the department, which shall notify the applicant and
35 forward the applicant's name as a licensee to the statewide registry.
36 The department shall provide the licensee with a certificate
37 identifying him or her as a "licensed professional conservator or
38 guardian." If the board denies the application for licensure, it shall
39 notify the department, which shall give the applicant notice of the
40 denial and the right to appeal that denial to the board.

1 (c) The board shall approve classes qualifying for the 15 hours
2 of prelicense training, as well as classes qualifying for the annual
3 continuing education requirement established by this chapter.

4 (d) The board shall maintain a current list of all approved
5 classes.

6 (e) The board shall arrange for the preparation and
7 administration of licensing examinations.

8 (f) The board shall establish a complaint committee, comprised
9 of three of its members, which shall receive complaints regarding
10 the actions of a professional conservator or guardian. The complaint
11 committee shall review a professional conservator or guardian's
12 alleged violation of statute or the Professional Fiduciary's Code
13 of Ethics, and any other complaint referred to it by the department,
14 and shall impose sanctions or refer to the Attorney General for
15 further prosecution upon a finding of a violation or a breach of
16 fiduciary duty. Sanctions shall include any of the following:

17 (1) Censure, either private or public.

18 (2) Suspension of the professional conservator or guardian's
19 license.

20 (3) Revocation of the professional conservator or guardian's
21 license.

22 (4) Filing of a civil or criminal court action, or both, by the
23 Attorney General, as appropriate.

24 (g) If the complaint committee imposes any of the sanctions
25 listed in paragraph (1), (2), or (3) of subdivision (f), it shall notify
26 the licensee in writing of the imposition of the sanctions, and of
27 the licensee's right to appeal the imposition of those sanctions
28 within 60 days of the receipt of the notice of the imposition of
29 sanctions and shall notify all courts in which the license has
30 conservatorships or guardianship cases of the sanction imposed.

31 (h) The board shall set the fees to be paid for the licensing
32 application and examination, as well as the fee to be paid for
33 license renewal. The cost shall not be borne by the conservatee or
34 ward.

35 6506. Board members shall be volunteers and shall not be
36 compensated for serving, but shall be reimbursed for expenses
37 incurred in the performance of their duties. Fees collected for the
38 license applications and renewals, as well as the licensing
39 examination, shall be deposited in the Professional Fiduciary Fund

1 in the State Treasury, which is hereby created. The money in the
2 fund, upon appropriation, shall be used to defray board expenses.

3 6507. Board members shall be immune from liability for any
4 act taken pursuant to this chapter, provided that they have acted
5 in good faith.

6 6508. The department shall review all applications for licensure
7 and refer those recommended for approval to the board. The
8 department shall not recommend approval for any applicant who
9 comes within any of the following descriptions:

10 (a) Has not met the qualifications for licensure under this
11 chapter.

12 (b) Has been convicted of any crime related to the functions
13 and duties of a fiduciary.

14 (c) Engages in fraud or deceit in applying for licensure under
15 this chapter.

16 (d) Has been found to have engaged in dishonesty, fraud, or
17 gross negligence in performing the functions or duties of a
18 professional conservator or guardian prior to the effective date of
19 this chapter.

20 (e) Has been removed as a fiduciary by a court for breach of
21 fiduciary duty prior to the effective date of this chapter, and all
22 appeals have been taken, or the time to file an appeal has expired.

23 6509. (a) To qualify for licensure, applicants shall have
24 completed 15 hours of prelicensing education provided by a
25 board-approved educational program.

26 (b) To remain licensed, a licensee shall complete 15 hours of
27 approved continuing education courses each year, and shall pay
28 the annual renewal fee set by the board. Completion of 15 hours
29 of approved continuing education courses shall not be required in
30 the year in which the professional conservator or guardian is
31 initially licensed.

32 (c) The cost of any educational program mandated by this
33 chapter shall not be borne by any client served by a professional
34 conservator or guardian.

35 6510. As a requirement for licensure, applicants shall take and
36 pass the licensing examination administered by the board. The
37 board shall determine the cost of the examination, and the
38 frequency with which it shall be administered.

39 6511. An applicant notified of the denial of his or her
40 application for licensure shall have the right to appeal to the board.

1 The appeal shall be filed within 60 days of the date of the notice
2 of denial.

3 6512. A person who has been notified of the approval of his
4 or her application for licensure may identify himself or herself as
5 a “licensed professional conservator or guardian.”

6 6513. Individuals, entities, agencies, and associations that
7 propose to offer educational programs qualifying for the
8 prelicensing educational or continuing educational requirements
9 of this chapter shall apply for, and obtain approval by the board.

10 6514. (a) Licenses shall expire on December 31 of each year,
11 except in the year a person is initially licensed, in which case the
12 license expires on December 31 of the following year.

13 (b) A license may be renewed upon proof of the licensee’s
14 compliance with the continuing education requirements of this
15 chapter, and payment of the renewal fee set by the board, provided
16 that the licensee has not engaged in conduct that would justify the
17 board’s refusal to grant the renewal. Acts justifying the board’s
18 refusal to renew a license shall include any of the following:

19 (1) Conviction of any crime related to the qualifications,
20 functions, and duties of a professional conservator or guardian.

21 (2) Fraud or deceit in obtaining a license under this chapter.

22 (3) Dishonesty, fraud, or gross negligence of the professional
23 conservator or guardian in performing the functions or duties of a
24 professional conservator or guardian.

25 (4) Removal by a court for breach of fiduciary duty, if all
26 appeals have been taken, or the time to file an appeal has expired.

27 6515. The department shall perform an initial review of a
28 complaint, and shall do one of the following:

29 (a) Determine that the complaint is not adequately documented,
30 in which case, it shall return the complaint to the complainant with
31 direction to provide further documentation.

32 (b) Determine that the complaint appears to be frivolous, in
33 which case, it shall forward the complaint to the complaint
34 committee with the recommendation that the complaint be
35 dismissed as frivolous.

36 (c) Determine that the complaint relates to a specific case, and
37 is either currently under review by the court, or has not yet been
38 presented to a court for resolution, in which case the complaint
39 shall be returned to the complainant for initial resolution by the
40 court.

(d) If the department, after investigation, determines that the complaint appears to be meritorious, it shall notify the complaint committee and the Attorney General in writing of the complaint and shall recommend disciplinary action. The complaint committee shall notify the professional conservator or guardian in writing of the complaint, and shall request a response with supporting documentation by a specified date.

(e) Each complaint that is referred to the complaint committee for investigation, shall be simultaneously and jointly assigned to an investigator in the Attorney General's office responsible for prosecuting the case if the investigation results in a court filing against the conservator. The assignment of the investigator shall exist for the duration of the disciplinary matter. During the assignment, the investigator so assigned shall, under the direction of a deputy attorney general, be responsible for obtaining the evidence required to permit the Attorney General to advise the board on legal matters such as whether a formal complaint should be filed, the complaint should be dismissed for a lack of evidence required to meet the applicable burden of proof, or take other appropriate legal action.

(f) The board, the Department of Consumer Affairs, and the Attorney General shall, if necessary, enter into an interagency agreement to implement this section.

6516. The board shall draft the Professional Fiduciaries' Code of Ethics. Copies of the Professional Fiduciaries' Code of Ethics shall be provided to persons who request an application for licensure. The board may amend the Professional Fiduciaries' Code of Ethics from time to time, as it deems necessary, provided that no amendment shall be effective until the next annual renewal of a professional conservator or guardian's license. Any amendment to the Professional Fiduciaries' Code of Ethics shall be included in the license renewal materials sent to the licensee.

SEC. 4. Section 1456 is added to the Probate Code, to read:

1456. (a) On or before July 1, 2007, the Judicial Council shall adopt a rule of court that shall do all of the following:

(1) Specifies the qualifications of a probate court attorney and investigator.

(2) Specifies the number of hours of education in classes related to conservatorships or guardianships that a probate judge, probate

1 court attorney, probate court investigator and public guardian shall
2 complete each year.

3 (3) Specifies the particular subject matter that shall be included
4 in the education required each year.

5 (4) Requires a probate judge, probate court attorney, probate
6 court investigator and public guardian to certify to the court the
7 completion of the yearly specified hours of education.

8 (b) In formulating the rule required by this section, the Judicial
9 Council shall consult with interested parties, including, but not
10 limited to, the California Judges Association, the California
11 Association of Superior Court Investigators, California State
12 Association of Public Administrators, Public Guardians, and Public
13 Conservators, the California Bar Association, the National
14 Guardianship Association, and the Association of Professional
15 Geriatric Care Managers.

16 SEC. 5. Section 1457 is added to the Probate Code, to read:

17 1457. In order to assist relatives and friends who may seek
18 appointment as a nonprofessional conservator or guardian:

19 (a) The Judicial Council shall develop a short educational
20 program of no more than three hours and shall make that program
21 available free of charge to each conservator and guardian who is
22 not required to be licensed as a professional conservator or guardian
23 pursuant to Chapter 6 (commencing with Section 6500) of Division
24 3 of the Business and Professions Code. The program may be
25 available by video or Internet access in addition to in-person access.

26 (b) Each probate court shall provide free assistance to
27 conservators and guardians who are not required to be licensed as
28 professional conservators or guardians pursuant to Chapter 6
29 (commencing with Section 6500) of Division 3 of the Business
30 and Professions Code in understanding the conservatorship or
31 guardianship court process and in completing necessary court
32 forms.

33 SEC. 6. Section 1458 is added to the Probate Code, to read:

34 1458. (a) On or before January 1, 2007, the Judicial Council
35 shall develop conservatorship accountability measures for use by
36 each court. The measures shall include at a minimum:

37 (1) The number of temporary conservatorships requested and
38 the number granted, noting the number of hearings in which notice
39 was waived, the number of hearings in which the proposed
40 conservatee attended the hearing, the number of contested hearings,

1 and whether the proposed conservator was a professional
2 conservator, the public guardian, or a family and friend not required
3 to register under Chapter 6 (commencing with Section 6500) of
4 Division 3 of the Business and Professions Code.

5 (2) The number of permanent conservatorships requested and
6 the number granted, noting the number of hearings in which the
7 proposed conservatee attended the hearing, the number of contested
8 hearings, and whether the proposed conservator was a professional
9 conservator, the public guardian, or a family member or friend not
10 required to register under Chapter 6 (commencing with Section
11 6500) of Division 3 of the Business and Professions Code.

12 (3) The number of accountings filed (A) over 30 days late and
13 (B) over 90 days late.

14 (b) Each court shall collect conservatorship accountability data
15 and report that data to Judicial Council every quarter. The Judicial
16 Council shall report that data annually to the Legislature.

17 SEC. 7. Section 1822 of the Probate Code is amended to read:

18 1822. (a) At least 15 days before the hearing on the petition
19 for appointment of a conservator, notice of the time and place of
20 the hearing shall be given as provided in this section. The notice
21 shall include information about free assistance provided by the
22 court to conservators pursuant to Section 1457 and about the
23 complaint process available through the Conservator Ombudsman
24 established pursuant to Section 9800 of the Welfare and Institutions
25 Code. The notice shall be accompanied by a copy of the petition.
26 The court may not shorten the time for giving the notice of hearing
27 under this section.

28 (b) Notice shall be mailed to the following persons:

29 (1) The spouse, if any, or domestic partner, if any, of the
30 proposed conservatee at the address stated in the petition.

31 (2) The relatives named in the petition at their addresses stated
32 in the petition.

33 (c) If notice is required by Section 1461 to be given to the
34 Director of Mental Health or the Director of Developmental
35 Services, notice shall be mailed as so required.

36 (d) If the petition states that the proposed conservatee is
37 receiving or is entitled to receive benefits from the Veterans
38 Administration, notice shall be mailed to the office of the Veterans
39 Administration referred to in Section 1461.5.

1 (e) If the proposed conservatee is a person with developmental
2 disabilities, at least 30 days before the day of the hearing on the
3 petition, the petitioner shall mail a notice of the hearing and a copy
4 of the petition to the regional center identified in Section 1827.5.

5 (f) The Judicial Council shall, on or before July 1, 2007, develop
6 a form to effectuate the notice required in subdivision (a).

7 SEC. 8. Section 1826 of the Probate Code is amended to read:

8 1826. Regardless of whether the proposed conservatee attends
9 the hearing, the court investigator shall do all of the following:

10 (a) Interview the proposed conservatee personally.

11 (b) Inform the proposed conservatee of the contents of the
12 citation, of the nature, purpose, and effect of the proceeding, and
13 of the right of the proposed conservatee to oppose the proceeding,
14 to attend the hearing, to have the matter of the establishment of
15 the conservatorship tried by jury, to be represented by legal counsel
16 if the proposed conservatee so chooses, and to have legal counsel
17 appointed by the court if unable to retain legal counsel.

18 (c) Determine whether it appears that the proposed conservatee
19 is unable to attend the hearing and, if able to attend, whether the
20 proposed conservatee is willing to attend the hearing.

21 (d) Review the allegations of the petition as to why the
22 appointment of the conservator is required and, in making his or
23 her determination, do the following:

24 (1) Refer to the supplemental information form submitted by
25 the petitioner and consider the facts set forth in the form that
26 address each of the categories specified in paragraphs (1) to (5),
27 inclusive, of subdivision (a) of Section 1821.

28 (2) Consider, to the extent practicable, whether he or she
29 believes the proposed conservatee suffers from any of the mental
30 function deficits listed in subdivision (a) of Section 811 that
31 significantly impairs the proposed conservatee's ability to
32 understand and appreciate the consequences of his or her actions
33 in connection with any of the functions described in subdivision
34 (a) or (b) of Section 1801 and identify the observations that support
35 that belief.

36 (e) Determine whether the proposed conservatee wishes to
37 contest the establishment of the conservatorship.

38 (f) Determine whether the proposed conservatee objects to the
39 proposed conservator or prefers another person to act as
40 conservator.

1 (g) Determine whether the proposed conservatee wishes to be
2 represented by legal counsel and, if so, whether the proposed
3 conservatee has retained legal counsel and, if not, the name of an
4 attorney the proposed conservatee wishes to retain.

5 (h) Determine whether the proposed conservatee is capable of
6 completing an affidavit of voter registration.

7 (i) To the greatest extent possible, personally interview the
8 relatives of the proposed conservatee set forth in subdivision (b)
9 of Section 1821 before the hearing.

10 (j) If the proposed conservatee has not retained legal counsel,
11 determine whether the proposed conservatee desires the court to
12 appoint legal counsel.

13 (k) Determine whether the appointment of legal counsel would
14 be helpful to the resolution of the matter or is necessary to protect
15 the interests of the proposed conservatee in any case where the
16 proposed conservatee does not plan to retain legal counsel and has
17 not requested the appointment of legal counsel by the court.

18 (l) Report to the court in writing, at least five days before the
19 hearing, concerning all of the foregoing, including the proposed
20 conservatee's express communications concerning both of the
21 following:

22 (1) Representation by legal counsel.

23 (2) Whether the proposed conservatee is not willing to attend
24 the hearing, does not wish to contest the establishment of the
25 conservatorship, and does not object to the proposed conservator
26 or prefer that another person act as conservator.

27 (m) Mail, at least five days before the hearing, a copy of the
28 report referred to in subdivision (k) to all of the following:

29 (1) The attorney, if any, for the petitioner.

30 (2) The attorney, if any, for the proposed conservatee.

31 (3) Any other persons as the court orders.

32 (n) The court investigator has discretion to release the report
33 required by this section to the public conservator, interested public
34 agencies, and the long-term care ombudsman.

35 (o) The report required by this section is confidential and shall
36 be made available only to parties, persons given notice of the
37 petition who have requested this report or who have appeared in
38 the proceedings, their attorneys, and the court. The court has
39 discretion at any other time to release the report, if it would serve
40 the interests of the conservatee. The clerk of the court shall provide

1 for the limitation of the report exclusively to persons entitled to
2 its receipt.

3 (p) This section does not apply to a proposed conservatee who
4 has personally executed the petition for conservatorship, or one
5 who has nominated his or her own conservator, if he or she attends
6 the hearing.

7 (q) If the court investigator has performed an investigation
8 within the preceding six months and furnished a report thereon to
9 the court, the court may order, upon good cause shown, that another
10 investigation is not necessary or that a more limited investigation
11 may be performed.

12 SEC. 9. Section 1829 of the Probate Code is amended to read:

13 1829. (a) Any of the following persons may appear at the
14 hearing to support or oppose the petition:

15 (1) The proposed conservatee.

16 (2) The spouse or domestic partner of the proposed conservatee.

17 (3) A relative of the proposed conservatee.

18 (4) Any interested person or friend of the proposed conservatee.

19 (b) The court shall inform any of the persons set forth in (a)
20 who appear at the hearing about the free assistance provided by
21 the court conservators pursuant to Section 1457.

22 SEC. 10. Section 1850 of the Probate Code is amended to read:

23 1850. (a) Except as provided in subdivision (b), each
24 conservatorship initiated pursuant to this part shall be reviewed
25 by the court at a noticed hearing six months after the appointment
26 of the conservator and annually thereafter.

27 (b) Notice of the hearing shall be provided to all persons listed
28 in subdivision (b) of Section 1822.

29 (c) This chapter does not apply to either of the following:

30 (1) A conservatorship for an absentee as defined in Section
31 1403.

32 (2) A conservatorship of the estate for a nonresident of this state
33 where the conservatee is not present in this state.

34 SEC. 11. Section 1851 of the Probate Code is amended to read:

35 1851. (a) When court review is required, the court investigator
36 shall, without prior notice to the conservator, visit the conservatee.
37 The court investigator shall inform the conservatee personally that
38 the conservatee is under a conservatorship and shall give the name
39 of the conservator to the conservatee. The court investigator shall
40 determine whether the conservatee wishes to petition the court for

1 termination of the conservatorship, whether the conservatee is still
2 in need of the conservatorship, whether the present conservator is
3 acting in the best interests of the conservatee, and whether the
4 conservatee is capable of completing an affidavit of voter
5 registration. If the court has made an order under Chapter 4
6 (commencing with Section 1870), the court investigator shall
7 determine whether the present condition of the conservatee is such
8 that the terms of the order should be modified or the order revoked.

9 (b) The findings of the court investigator, including the facts
10 upon which the findings are based, shall be certified in writing to
11 the court not less than 15 days prior to the date of review. A copy
12 of the report shall be mailed to the conservator and to the attorneys
13 of record for the conservator and conservatee at the same time it
14 is certified to the court.

15 (c) In the case of a limited conservatee, the court investigator
16 shall make a recommendation regarding the continuation or
17 termination of the limited conservatorship.

18 (d) The court investigator may personally visit the conservator
19 and other persons as may be necessary to determine whether the
20 present conservator is acting in the best interests of the conservatee.

21 (e) The report required by this section shall be confidential and
22 shall be made available only to parties, persons given notice of the
23 petition who have requested the report or who have appeared in
24 the proceeding, their attorneys, and the court. The court shall have
25 discretion at any other time to release the report if it would serve
26 the interests of the conservatee. The clerk of the court shall make
27 provision for limiting disclosure of the report exclusively to persons
28 entitled thereto under this section.

29 SEC. 12. Section 2250 of the Probate Code is amended to read:

30 2250. (a) On or after the filing of a petition for appointment
31 of a guardian or conservator, any person entitled to petition for
32 appointment of the guardian or conservator may file a petition for
33 appointment of:

34 (1) A temporary guardian of the person or estate or both.

35 (2) A temporary conservator of the person or estate or both.

36 (b) The petition shall state facts which establish good cause for
37 appointment of the temporary guardian or temporary conservator.
38 The court, upon that petition or other showing as it may require,
39 may appoint a temporary guardian of the person or estate or both,
40 or a temporary conservator of the person or estate or both, to serve

1 pending the final determination of the court upon the petition for
2 the appointment of the guardian or conservator.

3 (c) Unless the court for good cause otherwise orders, not less
4 than five days before the appointment of the temporary guardian
5 or temporary conservator, notice of the proposed appointment shall
6 be personally delivered to the proposed ward if 12 years of age or
7 older or to the proposed conservatee, to the parent or parents if the
8 proposed ward is a minor, and to any person having a valid
9 visitation order with the proposed ward that was effective at the
10 time of the filing of the petition. In a proceeding for temporary
11 guardianship of the person, evidence that a custodial parent has
12 died or become incapacitated and that the petitioner is the nominee
13 of the custodial parent may constitute good cause for the court to
14 order that this notice not be delivered. On or before July 1, 2007,
15 the Judicial Council shall adopt a rule of court that shall establish
16 uniform standards for good cause exceptions to the notice required
17 by this subdivision, limiting those exceptions to only cases when
18 waiver of the notice is essential to protect the proposed conservatee
19 or ward or the estate of the proposed conservatee or ward from
20 irreparable harm.

21 (d) If a temporary guardianship is granted ex parte and the
22 hearing on the general guardianship petition is not to be held within
23 15 days of the granting of the temporary guardianship, the court
24 shall set a hearing within 15 days to reconsider the temporary
25 guardianship. Notice of the hearing for reconsideration of the
26 temporary guardianship shall be provided pursuant to Section
27 1511, except that the court may for good cause shorten time for
28 notice of the hearing.

29 (e) Visitation orders with the proposed ward granted prior to
30 the filing of a petition for temporary guardianship shall remain in
31 effect, unless for good cause the court orders otherwise.

32 (f) One petition may request the appointment of a guardian or
33 conservator and also the appointment of a temporary guardian or
34 conservator or these appointments may be requested in separate
35 petitions.

36 (g) If the court suspends powers of the guardian or conservator
37 under Section 2334 or 2654 or under any other provision of this
38 division, the court may appoint a temporary guardian or conservator
39 to exercise those powers until the powers are restored to the

1 guardian or conservator or a new guardian or conservator is
2 appointed.

3 (h) If for any reason a vacancy occurs in the office of guardian
4 or conservator, the court, on a petition filed under subdivision (a)
5 or on its own motion, may appoint a temporary guardian or
6 conservator to exercise the powers of the guardian or conservator
7 until a new guardian or conservator is appointed.

8 SEC. 13. Section 2250.1 is added to the Probate Code, to read:

9 2250.1. (a) The proposed temporary conservatee shall attend
10 the hearing except in the following cases:

11 (1) If the proposed temporary conservatee is out of the state
12 when served and is not the petitioner.

13 (2) If the proposed temporary conservatee is unable to attend
14 the hearing by reason of medical inability.

15 (3) If the court investigator has visited the proposed conservatee
16 prior to the hearing and the court investigator has reported to the
17 court that the proposed temporary conservatee has expressly
18 communicated that ~~the proposed conservatee~~ all of the following
19 apply:

20 (A) ~~Is~~ *The proposed conservatee* is not willing to attend the
21 hearing.

22 (B) ~~Does~~ *The proposed conservatee does* not wish to contest
23 the establishment of the temporary conservatorship.

24 (C) ~~Does~~ *The proposed conservatee does* not object to the
25 proposed temporary conservator or prefer that another person act
26 as temporary conservatee need not attend the hearing.

27 (4) If the court determines that the proposed conservatee cannot
28 attend the hearing, and holding the hearing in the absence of the
29 proposed conservatee is necessary to protect the conservatee from
30 imminent harm.

31 (b) Emotional or psychological instability is not good cause for
32 the absence of the proposed temporary conservatee from the
33 hearing unless, by reason of that instability, attendance at the
34 hearing is likely to cause serious and immediate physiological
35 damage to the proposed temporary conservatee.

36 SEC. 14. Section 2250.2 is added to the Probate Code, to read:

37 2250.2. (a) Regardless of whether the proposed temporary
38 conservatee attends the hearing, the court investigator shall do all
39 of the following prior to the hearing, or, if not feasible before the
40 hearing, in no event later than 48 hours after the hearing:

1 (1) Interview the proposed conservatee personally.

2 (2) Inform the proposed conservatee of the contents of the
3 citation, of the nature, purpose, and effect of the proceeding, and
4 of the right of the proposed conservatee to oppose the proceeding,
5 to attend the hearing, to have the matter of the establishment of
6 the conservatorship tried by jury, to be represented by legal counsel
7 if the proposed conservatee so chooses, and to have legal counsel
8 appointed by the court if unable to retain legal counsel.

9 (3) Determine whether it appears that the proposed conservatee
10 is unable to attend the hearing and, if able to attend, whether the
11 proposed conservatee is willing to attend the hearing.

12 (4) Determine whether the proposed conservatee wishes to
13 contest the establishment of the conservatorships.

14 (5) Determine whether the proposed conservatee objects to the
15 proposed conservator or prefers another person to act as
16 conservator.

17 (6) Report to the court, in writing, concerning all of the
18 foregoing.

19 (b) If the investigator does not visit the conservatee until after
20 the hearing at which a conservator was appointed, and the
21 conservatee objects to the appointment of the temporary
22 conservator, the court shall set the matter for an expedited hearing
23 within 10 days of the investigator's visit.

24 SEC. 15. Section 2253 of the Probate Code is amended to read:

25 2253. (a) If a temporary conservator of the person proposes
26 to fix the residence of the conservatee at a place other than that
27 where the conservatee resided prior to the commencement of the
28 proceedings, that power shall be requested of the court in writing,
29 unless the change of residence is required of the conservatee by a
30 prior court order. The request shall be filed with the petition for
31 temporary conservatorship or, if a temporary conservatorship has
32 already been established, separately. The request shall specify in
33 particular the place to which the temporary conservator proposes
34 to move the conservatee, and the precise reasons why it is believed
35 that the conservatee will suffer irreparable harm if the change of
36 residence is not permitted, and why no means less restrictive of
37 the conservatee's liberty will suffice to prevent that harm.

38 (b) Unless the court for good cause orders otherwise, the court
39 investigator shall do all of the following:

40 (1) Interview the conservatee personally.

1 (2) Inform the conservatee of the nature, purpose, and effect of
2 the request made under subdivision (a), and of the right of the
3 conservatee to oppose the request, attend the hearing, be
4 represented by legal counsel if the conservatee so chooses, and to
5 have legal counsel appointed by the court if unable to obtain legal
6 counsel.

7 (3) Determine whether the conservatee is unable to attend the
8 hearing because of medical inability and, if able to attend, whether
9 the conservatee is willing to attend the hearing.

10 (4) Determine whether the conservatee wishes to oppose the
11 request.

12 (5) Determine whether the conservatee wishes to be represented
13 by legal counsel at the hearing and, if so, whether the conservatee
14 has retained legal counsel and, if not, the name of an attorney the
15 proposed conservatee wishes to retain or whether the conservatee
16 desires the court to appoint legal counsel.

17 (6) If the conservatee does not plan to retain legal counsel and
18 has not requested the appointment of legal counsel by the court,
19 determine whether the appointment of legal counsel would be
20 helpful to the resolution of the matter or is necessary to protect the
21 interests of the conservatee.

22 (7) Determine whether the proposed change of place of residence
23 is required to prevent irreparable harm to the conservatee and
24 whether no means less restrictive of the conservatee's liberty will
25 suffice to prevent that harm.

26 (8) Report to the court in writing, at least two days before the
27 hearing, concerning all of the foregoing, including the
28 conservatee's express communications concerning representation
29 by legal counsel and whether the conservatee is not willing to
30 attend the hearing and does not wish to oppose the request.

31 (c) Within seven days of the date of filing of a temporary
32 conservator's request to remove the conservatee from his or her
33 previous place of residence, the court shall hold a hearing on the
34 request.

35 (d) The conservatee shall be present at the hearing except in the
36 following cases:

37 (1) Where the conservatee is unable to attend the hearing by
38 reason of medical inability. Emotional or psychological instability
39 is not good cause for the absence of the conservatee from the
40 hearing unless, by reason of that instability, attendance at the

1 hearing is likely to cause serious and immediate physiological
2 damage to the conservatee.

3 (2) Where the court investigator has reported to the court that
4 the conservatee has expressly communicated that the conservatee
5 is not willing to attend the hearing and does not wish to oppose
6 the request, and the court makes an order that the conservatee need
7 not attend the hearing.

8 (e) If the conservatee is unable to attend the hearing because of
9 medical inability, that inability shall be established (1) by the
10 affidavit or certificate of a licensed medical practitioner or (2) if
11 the conservatee is an adherent of a religion whose tenets and
12 practices call for reliance on prayer alone for healing and is under
13 treatment by an accredited practitioner of that religion, by the
14 affidavit of the practitioner. The affidavit or certificate is evidence
15 only of the conservatee's inability to attend the hearing and shall
16 not be considered in determining the issue of need for the
17 establishment of a conservatorship.

18 (f) At the hearing, the conservatee has the right to be represented
19 by counsel and the right to confront and cross-examine any witness
20 presented by or on behalf of the temporary conservator and to
21 present evidence on his or her own behalf.

22 (g) The court may approve the request to remove the conservatee
23 from the previous place of residence only if the court finds (1) that
24 change of residence is required to prevent irreparable harm to the
25 conservatee and (2) that no means less restrictive of the
26 conservatee's liberty will suffice to prevent that harm. If an order
27 is made authorizing the temporary conservator to remove the
28 conservatee from the previous place of residence, the order shall
29 specify the specific place wherein the temporary conservator is
30 authorized to place the conservatee. The temporary conservator
31 may not be authorized to remove the conservatee from this state
32 unless it is additionally shown that such removal is required to
33 permit the performance of specified nonpsychiatric medical
34 treatment, consented to by the conservatee, which is essential to
35 the conservatee's physical survival. A temporary conservator who
36 willfully removes a temporary conservatee from this state without
37 authorization of the court is guilty of a felony.

38 (h) Subject to subdivision (e) of Section 2252, the court shall
39 also order the temporary conservator to take all reasonable steps

1 to preserve the status quo concerning the conservatee's previous
2 place of residence.

3 SEC. 16. Section 2321 of the Probate Code is amended to read:

4 2321. (a) Notwithstanding any other provision of law, the
5 court in a conservatorship proceeding may not waive the filing of
6 a bond or reduce the amount of bond required, without a good
7 cause determination by the court which shall include a
8 determination by the court that the conservator will not suffer harm
9 as a result of the waiver or reduction of the bond. Good cause
10 may not be established merely by the conservator having filed a
11 bond in another or prior proceeding.

12 (b) In a conservatorship proceeding, where the conservatee,
13 having sufficient capacity to do so, has waived the filing of a bond,
14 the court in its discretion may permit the filing of a bond in an
15 amount less than would otherwise be required under Section 2320.

16 SEC. 17. Section 2340 of the Probate Code is amended to read:

17 2340. (a) A superior court shall not appoint a professional
18 conservator guardian or permit any person to serve as a professional
19 conservator or professional guardian pursuant to Chapter 5
20 (commencing with Section 2350) or Chapter 6 (commencing with
21 Section 2400), unless the professional conservator or guardian is
22 licensed by the Department of Consumer Affairs pursuant to
23 Chapter 6 (commencing with Section 6500) of Division 3 of the
24 Business and Professions Code. If a conservator or guardian is
25 exempted from licensure requirements under that chapter, the court
26 may appoint that person to serve as a conservator or guardian
27 without a professional conservator or guardian license by the
28 Department of Consumer Affairs.

29 (b) No superior court may appoint a private professional trustee
30 unless the trustee has filed the information required by Sections
31 2342 and 2343 with the clerk of the court in each county where a
32 petition for appointment has been filed.

33 SEC. 18. Section 2342 of the Probate Code is amended to read:

34 2342. (a) All private professional trustees shall file annually
35 with the clerk of the court a statement, under penalty of perjury,
36 containing the following information:

37 (1) His or her educational background and professional
38 experience.

39 (2) At least three professional references.

1 (3) The aggregate dollar value of all assets currently under the
2 trustee's supervision.

3 (4) The trustee's addresses and telephone numbers for his or
4 her place of business and place of residence.

5 (5) Whether the trustee has ever been removed for cause as
6 trustee or has resigned as trustee in a specific case, the
7 circumstances causing that removal or resignation, and the case
8 names, court locations, and case numbers.

9 (6) The case names, court locations, and case numbers of all
10 trust cases which are closed for which the private professional
11 trustee served as the trustee.

12 (b) Upon filing of a petition for appointment, a private
13 professional trustee shall state that he or she is a private
14 professional trustee, and that the information required by this
15 section is on file with the clerk of the court.

16 (c) The clerk of the court shall order a background fingerprint
17 check from the Department of Justice and may request a
18 background fingerprint check from the Federal Bureau of
19 Investigation on each private professional trustee. The background
20 check shall include a record of all arrests resulting in conviction
21 and all arrests for which final disposition is pending. The
22 Department of Justice shall retain these fingerprints in its files and
23 shall provide any subsequent arrest information to the clerk of the
24 court pursuant to Section 11105.2 of the Penal Code until notified
25 by the clerk of the court that the person is no longer serving in the
26 capacity of a private professional trustee. The superior court shall
27 review the background fingerprint check prior to the appointment
28 of a private professional trustee. The court shall review annual
29 updates to the criminal background check on persons currently
30 serving in the capacity of a private professional trustee under the
31 court's jurisdiction. The background fingerprint check may be
32 dispensed with by the court if the petitioner was appointed as a
33 private professional trustee, or served in the capacity of a private
34 professional trustee, during the previous year and a background
35 fingerprint check was previously made.

36 (d) The information required by this section shall be made
37 available to the court for any purpose, including the determination
38 of the appropriateness of appointing or continuing the appointment
39 of, or removing, the trustee, but shall otherwise be kept
40 confidential.

1 (e) This section applies to all private professional trustees
2 regardless of the date of appointment.

3 SEC. 19. Section 2342.5 of the Probate Code is repealed.

4 SEC. 20. Section 2343 of the Probate Code is amended to read:

5 2343. The clerk of the court shall charge each private
6 professional trustee an annual filing fee that does not exceed the
7 average trustee annual cost in complying with this article. This fee
8 shall also include the cost of submitting the fingerprint card to the
9 Department of Justice. This fee shall be distributed to the court in
10 which it was collected.

11 SEC. 21. Section 2344 of the Probate Code is repealed.

12 SEC. 22. Section 2410 is added to the Probate Code, to read:

13 2410. On or before July 1, 2007, the Judicial Council shall
14 adopt a rule of court that shall require uniform standards of conduct
15 for actions that conservators and guardians may take under this
16 chapter on behalf of conservatees and wards to ensure that the
17 estate of conservatees or wards are maintained and conserved as
18 appropriate and to prevent risk of loss or harm to the conservatees
19 or wards. This rule shall include at a minimum standards for
20 determining the fees that may be charged to conservatees or wards
21 and standards for asset management.

22 SEC. 23. Section 2620 of the Probate Code is amended to read:

23 2620. (a) At the expiration of six months from the time of
24 appointment and thereafter not less frequently than annually, unless
25 otherwise ordered by the court to be more frequent, the guardian
26 or conservator shall present the accounting of the assets of the
27 estate of the ward or conservatee to the court for settlement and
28 allowance in the manner provided in Chapter 4 (commencing with
29 Section 1060) of Part 1 of Division 3.

30 (b) The final court accounting of the guardian or conservator
31 following the death of the ward or conservatee shall include a court
32 accounting for the period that ended on the date of death and a
33 separate accounting for the period subsequent to the date of death.

34 (c) Along with each court accounting, the guardian or
35 conservator shall file all supporting documents for all charges,
36 including all original account statements from any institution, as
37 defined in Section 2890, or any financial institution, as defined in
38 Section 2892, in which money or other assets of the estate are held
39 or deposited, showing the balance through the entire accounting
40 period of the court accounting. If the court accounting is the first

1 court accounting of the guardianship or conservatorship, the
2 guardian or conservator shall provide to the court the account
3 statement for the account balance immediately preceding the date
4 the conservator or guardian was appointed and the account
5 statement or statements for the account throughout the accounting
6 period until the closing date of the first court accounting. This
7 subdivision shall not apply to the public guardian if the money
8 belonging to the estate is pooled with money belonging to other
9 estates pursuant to Section 2940 and Article 3 (commencing with
10 Section 7640) of Chapter 4 of Part 1 of Division 7. Nothing in this
11 section shall affect any other duty or responsibility of the public
12 guardian with regard to managing money belonging to the estate
13 or filing accountings with the court.

14 (d) If any document to be filed with the court under this section
15 contains the ward or conservatee's social security number or any
16 other personal information regarding the ward or conservatee that
17 would not ordinarily be disclosed in a court accounting, an
18 inventory and appraisal, or other nonconfidential pleadings filed
19 in the action, the account statement shall be attached to a separate
20 affidavit describing the character of the document in proper form
21 for filing, captioned "CONFIDENTIAL FINANCIAL
22 STATEMENT" in capital letters. Except as otherwise ordered by
23 the court, the clerk of the court shall keep the document
24 confidential except to the court and subject to disclosure only upon
25 an order of the court.

26 (e) Each accounting is subject to random and full audit by the
27 court. Each accounting that the court determines may not be
28 accurate shall be subject to a full audit. The audit shall include a
29 review of all documents necessary to determine the accuracy of
30 the accounting. If the audit reveals any material error, the court
31 shall immediately do one of the following:

32 (1) Remove the conservator or guardian as provided under
33 Chapter 9 (commencing with Section 2650).

34 (2) Hold a hearing to determine the severity of the error and
35 whether the conservator or guardian should be removed as provided
36 under Chapter 9 (commencing with Section 2650).

37 (3) Make a finding that the error was harmless.

38 SEC. 24. Section 2620.2 of the Probate Code is amended to
39 read:

1 2620.2. (a) Whenever the conservator or guardian has failed
2 to file an account as required by Section 2620, the court shall
3 require that written notice be given to the conservator or guardian
4 and the attorney of record for the conservatorship or guardianship
5 directing the conservator or guardian to file an account and to set
6 the account for hearing before the court within 30 days of the date
7 of the notice or, if the conservator or guardian is a public agency,
8 within 45 days of the date of the notice.

9 (b) Failure to file the account within the time specified in the
10 under subdivision (a), or within 45 days of actual receipt of the
11 notice, whichever is later, shall constitute a contempt of the
12 authority of the court as described in Section 1209 of the Code of
13 Civil Procedure.

14 (c) If the conservator or guardian does not file an account with
15 all appropriate supporting documentation and set the account for
16 hearing as required by Section 2620 the court shall do one or more
17 of the following and shall report that action to the board established
18 pursuant to Section 6504 of the Business and Professions Code:

19 (1) Remove the conservator or guardian as provided under
20 Article 1 (commencing with Section 2650) of Chapter 9 of Part 4
21 of Division 4.

22 (2) Issue and serve a citation requiring a guardian or conservator
23 who does not file a required account to appear and show cause
24 why the guardian or conservator should not be punished for
25 contempt. If the guardian or conservator purposely evades personal
26 service of the citation, the guardian or conservator shall be
27 immediately removed from office.

28 (3) Suspend the powers of the conservator or guardian and
29 appoint a temporary conservator or guardian, who shall take
30 possession of the assets of the conservatorship or guardianship,
31 investigate the actions of the conservator or guardian, and petition
32 for surcharge if this is in the best interest of the ward or
33 conservatee. Compensation for the temporary conservator or
34 guardian, and counsel for the temporary conservator or guardian,
35 shall be treated as a surcharge against the conservator or guardian,
36 and if unpaid shall be considered a breach of condition of the bond.

37 (4) If the conservatee is exempt from the licensure requirements
38 of Chapter 6 (commencing with Section 6500) of Division 3 of
39 the Business and Professions Code, upon ex parte application or
40 such notice as the court may require, time to file the account, not

1 to exceed an additional 30 days after the expiration of the deadline
2 described in subdivision (a), where the court finds there is good
3 cause and that the estate is adequately bonded. After expiration of
4 any extensions, if the account has not been filed, the court shall
5 take action as described in paragraphs (1) to (3), inclusive.

6 (d) Subdivision (c) does not preclude the court from additionally
7 taking any other appropriate action in response to a failure to file
8 a proper accounting in a timely manner.

9 SEC. 25. Section 2623 of the Probate Code is amended to read:

10 2623. (a) Except as provided in subsection (b) of this section,
11 the guardian or conservator shall be allowed all of the following:

12 (1) The amount of the reasonable expenses incurred in the
13 exercise of the powers and the performance of the duties of the
14 guardian or conservator (including, but not limited to, the cost of
15 any surety bond furnished, reasonable attorney's fees, and such
16 compensation for services rendered by the guardian or conservator
17 of the person as the court determines is just and reasonable).

18 (2) Such compensation for services rendered by the guardian
19 or conservator as the court determines is just and reasonable.

20 (3) All reasonable disbursements made before appointment as
21 guardian or conservator.

22 (4) In the case of termination other than by the death of the ward
23 or conservatee, all reasonable disbursements made after the
24 termination of the guardianship or conservatorship but prior to the
25 discharge of the guardian or conservator by the court.

26 (5) In the case of termination by the death of the ward or
27 conservatee, all reasonable expenses incurred prior to the discharge
28 of the guardian or conservator by the court for the custody and
29 conservation of the estate and its delivery to the personal
30 representative of the estate of the deceased ward or conservatee
31 or in making other disposition of the estate as provided for by law.

32 (b) The guardian or conservator shall not be compensated from
33 the estate for any costs or fees that the guardian or conservator
34 incurred in unsuccessfully opposing a petition, or other request or
35 action, made by or on behalf of the ward or conservatee, unless
36 the court determines that the opposition was made in good faith,
37 based on the best interests of the ward or conservatee.

38 SEC. 26. Section 2640 of the Probate Code is amended to read:

39 2640. (a) At any time after the filing of the inventory and
40 appraisal, but not before the expiration of 90 days from the issuance

1 of letters or any other period of time as the court for good cause
2 orders, the guardian or conservator of the estate may petition the
3 court for an order fixing and allowing compensation to any one or
4 more of the following:

5 (1) The guardian or conservator of the estate for services
6 rendered to that time.

7 (2) The guardian or conservator of the person for services
8 rendered to that time.

9 (3) The attorney for services rendered to that time by the
10 attorney to the guardian or conservator of the person or estate or
11 both.

12 (b) Notice of the hearing shall be given for the period and in
13 the manner provided in Chapter 3 (commencing with Section 1460)
14 of Part 1.

15 (c) Upon the hearing, the court shall make an order allowing
16 (1) any compensation requested in the petition the court determines
17 is just and reasonable to the guardian or conservator of the estate
18 for services rendered or to the guardian or conservator of the person
19 for services rendered, or to both, and (2) any compensation
20 requested in the petition the court determines is reasonable to the
21 attorney for services rendered to the guardian or conservator of
22 the person or estate or both. The compensation allowed to the
23 guardian or conservator of the person, the guardian or conservator
24 of the estate, and to the attorney may, in the discretion of the court,
25 include compensation for services rendered before the date of the
26 order appointing the guardian or conservator. The compensation
27 allowed shall thereupon be charged to the estate. Legal services
28 for which the attorney may be compensated include those services
29 rendered by any paralegal performing legal services under the
30 direction and supervision of an attorney. The petition or application
31 for compensation shall set forth the hours spent and services
32 performed by the paralegal.

33 (d) Notwithstanding the provisions of subdivision (c), the
34 guardian or conservator shall not be compensated from the estate
35 for any costs or fees that the guardian or conservator incurred in
36 unsuccessfully opposing a petition, or other request or action, made
37 by or on behalf of the ward or conservatee, unless the court
38 determines that the opposition was made in good faith, based on
39 the best interests of the ward or conservatee.

40 SEC. 27. Section 2640.1 of the Probate Code is repealed.

1 SEC. 28. Section 2641 of the Probate Code is amended to read:

2 2641. (a) At any time permitted by Section 2640 and upon the
3 notice therein prescribed, the guardian or conservator of the person
4 may petition the court for an order fixing and allowing
5 compensation for services rendered to that time.

6 (b) Upon the hearing, the court shall make an order allowing
7 any compensation the court determines just and reasonable to the
8 guardian or conservator of the person for services rendered. The
9 compensation allowed to the guardian or conservator of the person
10 may, in the discretion of the court, include compensation for
11 services rendered before the date of the order appointing the
12 guardian or conservator. The compensation allowed shall thereupon
13 be charged against the estate.

14 (c) The guardian or conservator shall not be compensated from
15 the estate for any costs or fees that the guardian or conservator
16 incurred in unsuccessfully opposing a petition, or other request or
17 action, made by or on behalf of the ward or conservatee, unless
18 the court determines that the opposition was made in good faith,
19 based on the best interests of the ward or conservatee.

20 SEC. 29. Section 2850 of the Probate Code is amended to read:

21 2850. (a) (1) The Department of Consumer Affairs shall
22 maintain a Statewide Registry and shall make all information in
23 the registry available to the court for any purpose, but shall
24 otherwise keep this information confidential, except as provided
25 in this section.

26 (2) (A) On request, the registry shall disclose to the public the
27 following:

28 (i) Whether an individual is or is not registered with the
29 Statewide Registry.

30 (ii) Whether the Statewide Registry contains any information
31 filed pursuant to subdivision (d) for a specific individual regarding
32 his or her duties as a trustee.

33 (iii) The educational background and professional experience
34 of an individual registered with the Statewide Registry.

35 (B) Upon written request by a member of the public, the registry
36 shall provide access to any information filed with the registry
37 pursuant to subdivision (d) regarding a trustee.

38 (3) Except as otherwise provided in Section 2854, all persons
39 who wish to serve as a trustee or who are currently serving as a
40 trustee shall register with the Statewide Registry and shall reregister

1 every three years thereafter. “Registration” means the filing of a
2 declaration pursuant to subdivision (b).

3 (b) All trustees required to file information with the clerk of the
4 court pursuant to Section 2340 or required to register pursuant to
5 this chapter shall file a signed declaration with the Statewide
6 Registry. A person who signs a declaration pursuant to this
7 subdivision asserting the truth of any material matter which he or
8 she knows to be false is guilty of a misdemeanor punishable by
9 imprisonment for up to one year in a county jail, or a fine of not
10 more than two thousand dollars (\$2,000), or both that fine and
11 imprisonment. The declaration shall contain the following
12 information:

13 (1) Full name.

14 (2) Professional name, if different from paragraph (1).

15 (3) Business address.

16 (4) Business telephone number or numbers.

17 (5) His or her educational background and professional
18 experience, including verification of any college or graduate degree
19 claimed.

20 (6) The names of the current trusts administered by the trustee.

21 (7) The aggregate dollar value of all assets currently under the
22 trustee’s supervision.

23 (8) Whether he or she has ever been removed for cause or
24 resigned as trustee in a specific case, the circumstances of that
25 removal or resignation, and the case names, court locations, and
26 case numbers.

27 (c) The Department of Consumer Affairs may charge a
28 reasonable fee to persons registering and reregistering with the
29 Statewide Registry for the cost of that registration. The Department
30 of Consumer Affairs shall issue a certificate of registration to each
31 registrant.

32 (d) If a court makes a finding that a trustee has not properly
33 performed the duties of a trustee, and that finding results in an
34 order for a surcharge for other than nominal damages or for
35 removal of the trustee, the court clerk shall forward a copy of the
36 court’s findings and order to the Statewide Registry, which shall
37 include this information in the file of that trustee.

38 SEC. 30. Section 2851 of the Probate Code is amended to read:

1 2851. (a) A court may not appoint a person as a trustee unless
2 that person, if required to register under Section 2850, is registered
3 with the Statewide Registry.

4 (b) A trustee required to register under Section 2850 who has
5 not registered with the Statewide Registry on or before January 1,
6 2005, shall be removed as a trustee by the court, unless the court
7 finds reasonable grounds not to do so. If the court finds reasonable
8 grounds exist for not removing the trustee for failing to register
9 on or before January 1, 2005, the court shall order the trustee to
10 register with the Statewide Registry within 90 days of the court's
11 order and shall remove the trustee if the trustee has failed to register
12 at the end of the 90-day period.

13 (c) In appointing, continuing the appointment, or removing a
14 person as trustee, the court shall examine and consider the
15 information contained in the Statewide Registry for that person.
16 The information contained in the Statewide Registry shall be made
17 available to the court for this purpose, but shall otherwise be kept
18 confidential, except as provided by law.

19 SEC. 31. Section 2852 of the Probate Code is amended to read:

20 2852. (a) Any person required to register under Section 2850
21 who serves as a trustee without being registered with the Statewide
22 Registry, who commits fraud in registering, who falsely asserts
23 that he or she is registered, or who makes false claims or
24 representations as to the nature of his or her file contained in the
25 registry, shall be subject to a civil penalty in the amount of two
26 hundred dollars (\$200) for the first violation and a civil penalty in
27 the amount of five hundred dollars (\$500) for each subsequent
28 violation, to be assessed and collected in a civil action brought by
29 the Department of Consumer Affairs. All civil penalties collected
30 shall be deposited in the General Fund. A person who lawfully
31 delays registration pursuant to subdivision (b) of Section 2851
32 shall not be subject to a civil penalty for serving as a trustee without
33 being registered until the time that subdivision (b) of Section 2851
34 authorizes his or her removal for failure to register.

35 (b) Any court that removes a trustee for cause, and any court
36 that has accepted the resignation of a trustee, shall notify the
37 Statewide Registry of that removal or resignation and the reason
38 therefor. The courts shall consider that information prior to the
39 appointment of a person or entity pursuant to a subsequent petition
40 for appointment as trustee.

1 SEC. 32. Section 2853 of the Probate Code is amended to read:
2 2853. Notwithstanding any other provision of this chapter, in
3 cases of urgency, where circumstances and justice warrant the
4 appointment of a trustee and time is limited, a court may appoint
5 a person as trustee without consulting the Statewide Registry or
6 requiring registration prior to appointment.

7 SEC. 33. Section 2854 of the Probate Code is amended to read:
8 2854. (a) This chapter does not apply to any trustee when the
9 person is related to the trustor by blood, marriage, adoption,
10 registered domestic partnership, or a relationship that satisfies the
11 requirements of subdivision (a) and paragraphs (1) to (4), inclusive,
12 and paragraph (6) of subdivision (b) of Section 297 of the Family
13 Code.

14 (b) This chapter does not apply to any trustee who is serving
15 for the benefit of not more than three people or not more than three
16 families, or a combination of people or families that does not total
17 more than three. The number of trust beneficiaries does not count
18 for the purposes of calculating if a trustee falls within this
19 exclusion. A trust excluded under subdivision (a) or (b) does not
20 count for the purpose of calculating if a trustee falls within this
21 exclusion. For the purposes of this subdivision, family means
22 people who are related by blood, marriage, adoption, registered
23 domestic partnership, or a relationship that satisfies the
24 requirements of subdivision (a) and paragraphs (1) to (4), inclusive,
25 and paragraph (6) of subdivision (b) of Section 297 of the Family
26 Code.

27 (c) This chapter does not apply to a trustee who is any of the
28 following:

- 29 (1) Trust companies, as defined in Section 83.
30 (2) FDIC-insured institutions, their holding companies,
31 subsidiaries, or affiliates. For the purposes of this paragraph,
32 “affiliate” means any entity that shares an ownership interest with
33 or that is under the common control of, the FDIC-insured
34 institution.
35 (3) Employees of any entity listed in paragraph (1) or (2) while
36 serving as trustees in the scope of their duties.

37 SEC. 34. Section 2855 of the Probate Code is amended to read:
38 2855. It is the intent of the Legislature that both:

1 (a) Counties that provide for registration of trustees continue to
2 do so, and that the Statewide Registry not replace county
3 registration.

4 (b) Courts maintain oversight over the complaint process in
5 order to safeguard the reputations of trustees against unfounded
6 complaints.

7 (c) A trustee who is reregistering with the Statewide Registry,
8 after having met all the requirements stated in Section 2850, not
9 be required to reverify previously claimed college or graduate
10 degrees.

11 SEC. 35. Section 2920 of the Probate Code is amended to read:

12 2920. (a) If any person domiciled in the county requires a
13 guardian or conservator and there is no one else who is qualified
14 and willing to act and whose appointment as guardian or
15 conservator would be in the best interest of the person:

16 (1) The public guardian shall apply for appointment as guardian
17 or conservator of the person, the estate, or the person and estate if
18 the criteria for making that appointment have been met. On or
19 before ~~January~~ July 2007, the Judicial Council shall develop the
20 criteria.

21 (2) The public guardian shall apply for appointment as guardian
22 or conservator of the person, the estate, or the person and estate,
23 if the court so orders. The court may make an order under this
24 subdivision on motion of an interested person or on the court's
25 own motion in a pending proceeding or in a proceeding commenced
26 for that purpose. The court shall not make an order under this
27 subdivision except after notice to the public guardian for the period
28 and in the manner provided in Chapter 3 (commencing with Section
29 1460) of Part 1, consideration of the alternatives, and a
30 determination by the court that the appointment is necessary. The
31 notice and hearing under this subdivision may be combined with
32 the notice and hearing required for appointment of a guardian or
33 conservator.

34 (b) The public guardian may apply for appointment as guardian
35 or conservator of the person, the estate, or both on behalf of any
36 person domiciled in the county who requires a guardian or
37 conservator and who has assets of no more than ~~_____ dollars~~
38 ~~(\$_____)~~; *an amount to be determined by the Judicial Council on*
39 *or before July 1, 2007.*

1 (c) The public guardian shall personally visit each proposed
2 conservatee or ward within 48 hours of receiving notice of the
3 need for assistance.

4 SEC. 36. Division 8.7 (commencing with Section 9800) is
5 added to the Welfare and Institutions Code, to read:

6
7 DIVISION 8.7. CONSERVATORSHIP OMBUDSMAN
8

9 9800. There is within the California Department of Aging an
10 Office of the Conservatorship Ombudsman.

11 9801. (a) The office shall be under the direction of a chief
12 executive officer who shall be known as the Conservatorship
13 Ombudsman. The Conservatorship Ombudsman shall be appointed
14 by the director and shall report directly to the director. He or she
15 shall devote his or her entire time to the duties of his or her
16 position, and shall receive the salary otherwise provided by law.

17 (b) Any vacancy occurring in the position of Conservatorship
18 Ombudsman shall be filled in the same manner as the original
19 appointment. Whenever the Conservatorship Ombudsman dies,
20 resigns, becomes ineligible to serve for any reason, or is removed
21 from office, the director shall appoint an acting Conservatorship
22 Ombudsman within 30 days, who shall serve until the appointment
23 and qualification of the Conservatorship Ombudsman's successor,
24 but in no event longer than four months from the occurrence of
25 the vacancy. The acting Conservatorship Ombudsman shall
26 exercise during this period all the powers and duties of the
27 Conservatorship Ombudsman pursuant to this chapter.

28 9802. (a) The Conservatorship Ombudsman shall possess at
29 least a bachelor's degree, and have a minimum of five years'
30 professional experience that shall include at least fiduciary asset
31 management and at least three of the following four areas:

32 (1) Gerontology, long-term care, or other relevant social services
33 or health services programs.

34 (2) The legal system and the legislative process.

35 (3) Dispute or problem resolution techniques, including
36 investigation, mediation, and negotiation.

37 (4) Organizational management and program administration.

38 (b) The professional experience described in ~~paragraph~~
39 *subdivision* (a) requires any reasonable combination of the fields
40 described in that ~~paragraph~~ *subdivision* for a total of five years,

1 and does not require five years' experience in each area. At the
2 discretion of the director, a master's or doctorate degree relevant
3 to a field described in ~~paragraph~~ *subdivision* (a) may be substituted
4 for one or two years, respectively, of professional experience.
5 However, the applicant's professional experience and field of study
6 leading to the master's or doctorate degree shall, nevertheless,
7 include all of the fields described in ~~paragraph~~ *subdivision* (a).

8 9803. (a) Upon request of the office, the Attorney General
9 shall represent the office or the department and the state in
10 litigation concerning affairs of the office, unless the Attorney
11 General represents another state agency, in which case the agency
12 or the office shall be authorized to employ other counsel.

13 (b) The Conservatorship Ombudsman may employ technical
14 experts and other employees that, in his or her judgment, are
15 necessary for the conduct of the business of the office.

16 9804. The office may solicit and receive funds, gifts, and
17 contributions to support the operations and programs of the office.
18 The office may form a foundation eligible to receive tax-deductible
19 contributions to support the operations and programs of the office.
20 The office shall not solicit or receive any funds, gifts, or
21 contributions ~~where if~~ the solicitation or receipt would jeopardize
22 the independence and objectivity of the office.

23 9805. (a) No representative of the office shall be held liable
24 for good faith performance of responsibilities under this chapter.

25 (b) No discriminatory, disciplinary, or retaliatory action shall
26 be taken against any person for any communication made, or
27 information given or disclosed, to aid the office in carrying out its
28 duties and responsibilities, unless the same was done maliciously
29 or without good faith. This subdivision is not intended to infringe
30 on the rights of the employer to supervise, discipline, or terminate
31 an employee for other reasons.

32 (c) All communications by a representative of the office, if
33 reasonably related to the requirements of that individual's
34 responsibilities under this chapter and done in good faith, shall be
35 privileged, and that privilege shall serve as a defense to any action
36 in libel or slander.

37 (d) Any representative of the office shall be exempt from being
38 required to testify in court as to any confidential matters, except
39 as the court may deem necessary to enforce the provisions of this
40 chapter.

1 9806. The department shall be responsible for establishing a
2 statewide uniform reporting system to collect and analyze data
3 relative to complaints regarding conservatorships for the purpose
4 of identifying and resolving significant problems. The department
5 shall submit the data to the Department of Consumer Affairs which
6 is responsible for regulating conservators.

7 9807. (a) The office shall investigate and seek to resolve
8 complaints and concerns communicated by, or on behalf of,
9 conservatees. Complaint investigation shall be done in an objective
10 manner to ascertain the pertinent facts.

11 (b) At the conclusion of any investigation of a complaint, the
12 findings shall be reported to the complainant and to the licensing
13 board established pursuant to Section 6504 of the Business and
14 Professions Code. If the office does not investigate a complaint,
15 the complainant shall be notified in writing of the decision not to
16 investigate and the reasons for the decision.

17 9808. The Conservatorship Ombudsman shall have access to
18 any record of a state or local government agency that is necessary
19 to carry out his or her responsibilities under this chapter, including
20 records rendered confidential.

21 9809. All records and files of the office relating to any
22 complaint or investigation made pursuant to this chapter and the
23 identities of complainants, witnesses, patients, or residents shall
24 remain confidential, unless disclosure is required by court order,
25 or release of the information is to a law enforcement agency, public
26 protective service agency, *or a* licensing or certification agency
27 in a manner consistent with federal laws and regulations.